

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2000-000704

12/17/2002

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

MICHAEL SOVA CHINN

JAMES S TINKER

v.

STATE OF ARIZONA

GARY L SHUPE

FINANCIAL SERVICES-CCC
PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #5819518

Charge: 1. DUI
2. DUI W/AC .10 OR MORE
3. EXTREME DUI .18 OR MORE

DOB: 04/24/57

DOC: 05/18/99

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since oral argument on November 18, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record from the Phoenix City Court, and the excellent Memoranda submitted by counsel in this case.

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The only issue presented to this court for review is whether the trial court erred in denying Appellant's Motion to Dismiss on March 20, 2002. Appellant had filed his Motion to Dismiss alleging a violation of the statute of limitation [A.R.S. Section 13-107(B)]. Neither party has raised any questions of fact. The question of law presented to this Court must be reviewed *de novo*.¹

At issue are the calculations of the time that expired between a final ruling by Judge Steven Sheldon of this court in a previous appeal by the State in this case and others consolidated under the Hentges case name, and the re-filing of these charges against Appellant. Judge Sheldon made his ruling on May 31, 2001 (he affirmed the lower court's suppression order). Those charges were re-filed by the State on December 19, 2001.

Appellee argues that an appealable order of the Superior Court becomes final "20 days after its entry if no Notice of Appeal is filed (citation omitted)."² Appellee also cites Rule 31.3, Arizona Rules of Criminal Procedure in support of its contention. However, Rule 31.3 has no application to lower court appeals. Rather, Rule 31.3 applies in those instances where an appeal is made to the Court of Appeals from a Superior Court Order.

This Court must conclude that the re-filing of charges against Appellant on December 19, 2001 was not timely. This Court concludes that the trial judge erred in concluding that A.R.S. Section 13-107(G) was not violated. This Court finds that it was.

IT IS THEREFORE ORDERED reversing the judgments of guilt and sentence imposed by the Phoenix City Court.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court, with instructions to dismiss the charges in this case and to enter judgment accordingly.

¹ State v. Garcia, 162 Ariz. 471, 784 P.2d 297 (App. 1989).

² Appellee's Brief, at page 5.